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EXAMINER

HALPERN, MARK

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THE PROCTER & GAMBLE COMPANY

Appeal 2015-006428
Application 13/928,533
Technology Center 1700

Before LINDA M. GAUDETTE, GEORGE C. BEST, and AVELYN M. ROSS,
Administrative Patent Judges.

GAUDETTE, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's decision² finally rejecting claims 1–16 under 35 U.S.C. § 103(a) as unpatentable over Baggot et al. (US 2008/0264280 A1, pub. Oct. 30, 2008 (“Baggot”)) alone, or in combination with Nickel et al. (US 2007/0137813 A1, pub. June 21, 2007 (“Nickel”)). We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Appellant is also the real party in interest. Appeal Brief filed Jan. 20, 2015 (“App. Br.”), 1.

² Final Office Action mailed Aug. 21, 2014 (“Final Act.”).

The invention relates to an improved technique for imparting printed designs to sheet products formed from web materials. *See* Specification filed June 27, 2013 (“Spec.”), 2:5–7. Claim 1 is representative of the invention and is reproduced below:

1. A system for manufacturing pluralities of consecutive sheets bearing successively varying arrangements of design features, comprising:

a pattern imparting roller having a radius r , a rotation axis, an outer circumference $2\pi r$, and a substantially cylindrical acting surface reflecting features of a design pattern thereon, a machine direction tangent to the acting surface and perpendicular to the rotation axis, and a cross direction parallel to the rotation axis, the acting surface having an axial acting surface length AL measured along the cross direction, the design pattern having a machine direction repeat length RLM ; and

a separating mechanism disposed downstream of the pattern imparting roller, configured to effect repeated and spaced complete cutting, or repeated and spaced partial cutting, perforating or scoring along separation lines, between portions of a material web, the separation lines being spaced apart on the web by sheet length SL measured along the machine direction,

wherein SL is less than RLM ; and

wherein the design pattern has the following attributes:

the design pattern has no linear, continuous unadorned pathway along the cross direction that has a pathway width greater than 7 percent of SL ;

the design pattern includes series of similarly-shaped design elements along lines that are neither perpendicular nor parallel with the machine and cross directions; and

any image in the design pattern of all or a portion of a person, animal, anthropomorphic character or cartoon character including at least a head and/or face of the

same, has an Occupied Rectangular Area of no more than 10 percent of the average sheet area.

App. Br., Claims App’x, A-1–A-2 (emphasis added). Claim 9, the only other independent claim on appeal, differs from claim 1 primarily in that where one claim recites the “cross direction” the other claim may recite the “machine direction,” and *vice versa*. Compare *id.* (claim 1) with *id.* at A-2–A-3 (claim 9); see App. Br. 6–7.

Appellant does not dispute the Examiner’s finding (see Final Act. 2–3) that Baggot discloses the invention as claimed in claims 1 and 9 with the exception of a design pattern on the pattern imparting roller that has the attributes of (1) “no linear, continuous unadorned pathway along the cross direction [(claim 1) or the machine direction (claim 9)] that has a pathway width greater than 7 percent of [sheet length] SL” and (2) “any image in the design pattern of all or a portion of a person, animal, anthropomorphic character or cartoon character including at least a head and/or face of the same, has an Occupied Rectangular Area of no more than 10 percent of the average sheet area” (claims 1 and 9). See generally, App. Br. 6–9. Appellant argues, however, that the facts and reasons relied on by the Examiner are insufficient to support a finding that one of ordinary skill in the art would have modified Baggot’s pattern imparting roller to include a design pattern having these attributes. See *id.* at 7–9.

Rejection of claims 1–16 as unpatentable over Baggot

The Examiner determines the argued claim language does not recite structural limitations, and that Baggot’s pattern imparting roller and separating mechanism would be capable of imparting to a sheet a design pattern having the attributes recited in claims 1 and 9. Final Act. 3; see also Ans. 4–5. In response to Appellant’s assertion that the Examiner dismissed the argued claim language as

unnecessary to the patentability analysis, the Examiner, in the Answer, explains that “[f]eatures relating only to ornamentation which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art” (Ans. 5 (citing *In re Seid*, 161 F.2d 229 (CCPA 1947))), and directs us to page 1, lines 25–27, of the Specification as support for the Examiner’s determination that the argued claim language relates to decorative, rather than structural features (*id.*).

In the Reply Brief, Appellant directs us to page 11, line 3, through page 14, line 11, of the Specification in support of its contention that the argued claim language recites structural limitations. Reply Brief filed June 18, 2015 (“Reply Br.”), 3–4. With respect to the recitation in claims 1 and 9 that “the design pattern has no linear, continuous unadorned pathway along the cross direction [(claim 1) or the machine direction (claim 9)] that has a pathway width greater than 7 percent of [sheet length] SL,” Appellant argues, more specifically, that this language is a functional limitation because a pathway having “the specified size can ‘help reduce or eliminate periodic, abrupt changes in the forces imposed on the roller surface and transferred through the roller to its axle and/or bearing mechanism, thereby reducing equipment wear and/or the need for shock-absorbing equipment.’” Reply Br. 3 (quoting Spec. 12:19–22).

We have reviewed the argued claim language in light of the Specification and agree with the Examiner that it does not recite structural limitations. The disclosure in the Specification cited by Appellant as describing the function of a continuous unadorned pathway having the specified width, pertains to design patterns imparted to a web by an embossing roller. Spec. 12:19–22; *see also id.* at 13:9–11. Claims 1 and 9 do not include explicit language that limits the pattern imparting roller to an embossing roller, nor do we find support in the Specification

for limiting claims 1 and 9 to require an embossing roller. *See, e.g.*, Spec. 6:2–3 (“As it passes through the nip between rollers 100 and 101, the web material is imparted with printed, molded or embossed features 11 of the decorative design.”). Based on a review of the Specification, it is clear that the claim language pertaining to the continuous unadorned pathway relates to ornamental features: “effective for avoiding the *appearance* of a natural pathway for the location of a separation line, *i.e.*, a division between sequential sheets” (*id.* at 13:4–9 (emphasis added)). With respect to the claim language in the last paragraph of each of claims 1 and 9, the Specification states:

It is believed that, where the image has an Occupied Rectangular Area that is no more than 10 percent of the sheet area for any particular such image present in the pattern, the likelihood that the sheet on which it partially or entirely falls will be *perceived* as haphazardly cut with respect to the pattern is greatly reduced.

Id. at 14:2–5 (emphasis added). This claim language, therefore, likewise relates to ornamental features.

In sum, having considered the argued claim language in light of the Specification, we agree with the Examiner that it is not a recitation of structural limitations, and cannot be relied upon to patentably distinguish the claimed invention from the prior art. Accordingly, we sustain the Examiner’s rejection of claims 1–16 as unpatentable over Baggot.

Rejection of claims 1–16 as unpatentable over Baggot and Nickel

The Examiner determines that, even if the argued claim language is a recitation of structural limitations, the invention as recited in claims 1 and 9 would have been obvious based on the combined teachings of Baggot and Nickel. *See* Final Act. 3–4. Specifically, the Examiner finds Nickel discloses a pattern imparting roller having raised pattern elements that can “form any desired

decorative pattern in [a] tissue web.” *Id.* at 3 (quoting Nickel ¶ 142). The Examiner further finds “[t]he pattern may include a combination of reticulated pattern and discrete shapes . . . [and] covers between about 1% and about 80% of the surface area of the sheet.” *Id.* (citing Nickel ¶ 142). The Examiner finds one of ordinary skill in the art would have modified Baggot’s pattern imparting roller to include any of the patterns described in Nickel, including a pattern having the attributes recited in claims 1 and 9, based on Nickel’s disclosure that a pattern imparting roller can be used to apply a wide variety of patterns to a tissue web. *See id.* at 3–4; Ans. 5–6.

Appellant argues “there is no particular teaching in Nickel . . . that would have led one to select particular design pattern features to combine them with and/or modify design features of Baggot . . . , so as to arrive at [the] claimed inventions.” App. Br. 8.

Nickel discloses that the pattern applied to a tissue web can be any desired decorative pattern. Nickel ¶ 142. Nickel explicitly discloses that the pattern may comprise a combination of a reticulated pattern and discrete shapes such as flowers, symbols, and leaves (*id.*), and that the discrete shapes can be arranged in a random fashion (*id.* ¶ 143). Based on Nickel’s disclosure that such pattern may cover as much as about 80% of the surface area of individual sheets (Nickel ¶ 142), we find the Examiner had a reasonable basis for concluding that Nickel suggests a design pattern having the attributes recited in the final wherein clause of claims 1 and 9. We note that, to the extent the recitation in the final paragraph of each of claims 1 and 9 is considered a structural limitation, it limits the scope of the claims only when the design pattern is “a person, animal, anthropomorphic character or cartoon character” (claims 1 and 9), i.e., it does not limit a pattern in which the discrete shapes are flowers, symbols, or leaves.

Baggot discloses that the pattern or design on its pattern imparting roller may be any aesthetically pleasing design. *See* Baggot ¶¶ 24–25. We further find, therefore, that the Examiner had a reasonable basis for finding the ordinary artisan would have used Nickel’s pattern comprising a reticulated pattern and randomly arranged discrete shapes on Baggot’s pattern imparting roller, based on Nickel’s disclosure that such pattern is aesthetically pleasing when applied to a tissue web (*see* Nickel ¶ 142). *See* Final Act. 3–4; Ans. 5–6.

In sum, we are not persuaded by Appellant’s argument, but find a preponderance of the evidence on this appeal record supports the Examiner’s conclusion of obviousness. Accordingly, we sustain the Examiner’s rejection of claims 1–16 as unpatentable over Baggot and Nickel.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. §1.136(a)(1)(iv).

AFFIRMED